IN THE HIGH COURT OF JUDICATURE
FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.8447/2007.

Man Mohan Chaturvedi
Vs.
Additional Civil Judge (Sr.Division) and Judicial Magistrate (Ist Class) Karauli and anr.

Date of order : 11/10/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Hari Krishna Sharma for the petitioner.

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BY THE COURT:-

Heard learned counsel for the petitioner.

2) The plaintiff-petitioner has challenged the order dated 21/9/2007 whereby his application filed before the civil court on 12/7/2007 under Order 8 Rule 1 CPC was rejected. In that application, plaintiff-petitioner had prayed that written-statement filed by the defendant on

10/8/2007 should not be taken on record because the same has been filed beyond the period of 90 days as prescribed by the aforesaid provision.

3) Learned counsel for the petitioner has argued that summon of the suit for the first time was served on the defendant on 1/3/2007 and he was therefore required to file written-statement within 30 days thereafter upto 30/3/2007 and this period at the best could be extended upto 90 days which would also expire on 29/6/2007. The learned trial court while rejecting the application of the petitioner, has not given any cogent reason as to why the written-statement be not taken on record. The impugned-order passed by the learned trial court suffers from non-application of mind. Learned counsel for the petitioner has in this connection relied on the judgment of Supreme Court in **Aditya Hotels (P) Ltd. Vs. Bombay Swadeshi Store Ltd. & Ors. : 2007 DNJ (SC) 305** and judgment of the learned Single Bench of this Court in **Satish Chandra Vs. Additional District Judge, Baran & Ors. : 2006(2) RLW 1513.**

4) Having heard learned counsel for the petitioner and perused the impugned-order and the case law cited at the bar, I find that the learned trial court has in its order noted certain facts which are peculiar to the present case that counsel for the petitioner put in appearance on 2/3/2007 and then on 17/3/2007 he filed an application for amendment in the suit and the matter thus remained pending for consideration on that application therefore, written-statement could not be filed. Plaintiff thereafter did not press his that application and then filed an other application under Order 6 Rule 17 CPC. That application was disposed of by the trial court on 7/5/2007 requiring the plaintiff to file a corrected application. Therefore, plaintiff thereafter filed another application on 23/5/2007. During interregnum of this period, defendant filed written-statement on 10/8/2007.

5) In the facts of the case, the delay that was caused in filing written-statement by the

defendant could not be solely attributed to him alone as he was mislead by repeated applications by the plaintiff. The aforesaid judgments relied upon by the learned counsel for the petitioner are distinguishable on facts.

6) In my considered view, therefore, the impugned-order does not suffer from any apparent error so as to make any interference by this Court.

The writ petition is therefore dismissed.

(MOHAMMAD RAFIQ), J.

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